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Washington, D.C. 20530

OGC 77-5038
5 August 1977

Justice
20 July 77

Honorable John M. Harmon
Assistant Attorney General
Office of Legal Counsel
Department of Justice
Washington, D.C. 20530

Dear Mr. Harmon:

On July 7, Attorney General Bell forwarded to the Director of Central Intelligence draft guidelines governing dissemination by the Federal Bureau of Investigation of information obtained through the use of electronic surveillance and requested comments on these guidelines before putting them into effect. We appreciate the opportunity to respond to his request on behalf of the Director.

Although the procedures are acceptable for the most part, we have several suggestions for modifications which we would like you to consider. These suggestions are spelled out in detail in the attached memorandum. If you have any questions, please contact me or [redacted]

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[redacted] of this Office on [redacted]

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Yours sincerely,

[redacted signature box]

Acting General Counsel

Attachment
cc: ER✓

[redacted box]

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MEMORANDUM

SUBJECT: Draft Guidelines Governing Dissemination by FBI of
Information Derived from Electronic Surveillance

1. Part II of the guidelines provides that "[i]nformation disseminated to other Federal agencies in the intelligence community which have a direct counterintelligence interest in the information may identify or permit identification of United States persons," and that "information... of interest to, but ... not relat[ing] to the direct responsibilities of the receiving agency," may not identify U.S. persons. We are concerned that this formulation, in particular the limitation to agencies with a direct counterintelligence interest, may inhibit the dissemination to CIA of information important to its foreign counterintelligence mission. CIA needs to be apprised on a timely basis of the interests, activities and contacts, including U.S. persons, of foreign intelligence services in the United States if CIA is to deal effectively with similar activities and contacts abroad. In virtually every case in which a U.S. person is in contact with a non-U.S. person who is the subject of a foreign counterintelligence inquiry, or is known or reasonably believed to be acting on behalf of a foreign power, CIA has a direct counterintelligence interest in information which may identify or permit identification of that U.S. person. Executive Order 11905 does not restrict the dissemination to, and acquisition and retention by, CIA of such information, §§4(g)(4), 5(b)(7)(i) and (v). We strongly believe that all such information should be provided to CIA and suggest that Part II be amended to explicitly permit, if not mandate, its dissemination to CIA. One way this might be done is to insert the words "CIA and" between "disseminated to" and "other Federal agencies" in the sentence quoted at the beginning of this paragraph.

2. Part IV limits the "dissemination of information relating to criminal activity which is acquired ... during counterintelligence investigations or the collection of foreign intelligence information." We are concerned with this part insofar as it might restrict the dissemination to CIA of information relating to international terrorism or other foreign intelligence or counterintelligence information that would be considered as information relating to criminal activity. We suggest that this section be amended to specify such information should be disseminated to CIA. This can be done by adding a subparagraph E. to this section which would read as follows:

Any foreign intelligence or counterintelligence information
which may relate to criminal activity, including information

3. Part V, in establishing guidelines for the dissemination of information concerning the trustworthiness of Federal employees and persons granted access to classified information, does not take into account that the CIA may have interests in former as well as current individuals in contact with the Agency. We suggest that the first sentence in Part V be modified as follows:

Information which raises a question about the trustworthiness of a current or former Federal employee, a person who held or is holding a security clearance or a person who has been or is granted access ...

Moreover, CIA has a need to investigate individuals for logistical service reasons and for operational reasons who will not be employees of the Agency or formally granted security clearances. GSI employees, GSA employees and telephone company employees assigned to Agency buildings have a facility access without being employees of the Agency or without having been granted a security clearance. Also, information required for a security decision will be required on employees of a proprietary organization even if they are not to be briefed. To preclude any possibility that information concerning these individuals may not be disseminated to CIA, we recommend that the following subparagraphs be added to Section V:

Information which raises a question about the trustworthiness of competitive service applicants, or current or former employees assigned or detailed to a Government agency in a staff capacity or in a position with staff-like access or with facility access may be disseminated to that agency or another Federal agency having responsibility to investigate the trustworthiness of the individual. The information disseminated may identify the individual.

Information which raises a question about the trustworthiness of a current or former contractor of a Government agency or a current or former employee of such contractor who has or had access to sensitive information or facilities may be disseminated to that agency or another Federal agency having responsibility to investigate the trustworthiness of the individual. The information disseminated may identify the individual.

Information which raises the question about the trustworthiness of individuals who are to be used in support of CIA operations or were used in support of Agency operations, or are or were given security approval because of their access to information

about CIA activities, should not be disseminated until the FBI has verified the CIA's official interest in the individual concerned. The information disseminated may identify the individual.

4. Part VII.A. states that the "dissemination of foreign intelligence information to foreign governments is not within the responsibility of the FBI" and that other agencies must obtain prior Attorney General approval before they may disseminate foreign intelligence obtained from the FBI about U.S. persons to foreign governments. Under Executive Order 11905, the Bureau may disseminate foreign intelligence to cooperative foreign governments pursuant to Attorney General procedures (§4(g)(4)) but in keeping with CIA's responsibility for the conduct of liaison with foreign intelligence services under NSCID No. 5 and related Directives, such dissemination should be made through CIA. We suggest that this part be amended to provide that the FBI may disseminate information which identifies or permits identification of U.S. persons to CIA for further dissemination to foreign governments, under specific standards if necessary, rather than to provide solely for an ad hoc approach.

5. Part VII.B. would permit the FBI to disseminate counterintelligence information to foreign governments in certain circumstances. Although the Executive Order authorizes the FBI to disseminate counterintelligence information to cooperating foreign governments, we question whether the FBI may disseminate unilaterally foreign counterintelligence information to foreign governments, since CIA is the primary foreign counterintelligence authority abroad, see NSCID No. 5. The authorities outlined in the subparagraphs of this section, therefore, should be amended as follows:

B. Counterintelligence Information.

Counterintelligence information may be disseminated to foreign intelligence or security agencies when such dissemination is in the interest of the security or foreign policy of the United States. Foreign counterintelligence information and information on international terrorism may be disseminated to CIA for further dissemination to foreign intelligence or security agencies. Any dissemination of such information to foreign agencies is subject to the following conditions:

* * * *

6. Part VII.C. regulates the dissemination of criminal information to foreign governments. For the reasons mentioned in our comments on Part IV, we suggest that the following paragraph be added to this subsection:

5. Foreign intelligence and counterintelligence information, including information relating to international terrorism and requests by foreign intelligence and security services for information relating to international terrorists, may be disseminated to CIA for dissemination to appropriate agencies of a foreign government.

cc: ER